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August 27, 2004

**Re: Comments of the Initiative for Software Choice on the  
California Performance Review**

The Initiative for Software Choice (ISC) is a coalition of software companies and associations comprised of over 300 members across the globe. Our California-based members include large IT companies such as Intel and AutoDesk, as well as a number of small and medium sized California-based software companies. Since 2001, the ISC has worked in the US, in nearly a dozen states and around the globe to advance the concept that multiple, competing software licensing models should be allowed to develop and flourish, unimpeded by government preference or mandate.

We commend the significant effort made to produce the CPR and support its overall objective to secure the most efficient use of California's resources while delivering improved government services to its citizens. We agree that California, as the birthplace of the technology revolution, should strive towards leadership in state IT

management. While the ISC supports and endorses the vast majority of proposals contained in Chapter 7 of the CPR, we must respectfully oppose subchapter S010. In a practical sense, the ways in which subchapter S010 recommends exploring open source alternatives create a de facto procurement preference for open source software (OSS) in California, which we respectfully submit, would do little to reduce your budget concerns, and instead, would harm the administration of state government, taxpayer welfare, and the health of California's IT industry—the vast majority of which produces commercial software.

In the last two years nearly a dozen states have considered and rejected proposals similar to this one. In fact just two years ago, the California legislature chose not to take up a bill that would have mandated the government's preference of OSS in its government IT acquisitions. At that time, the ISC weighed in opposition to the so-called "Digital Software Security Act" for many of the same reasons that we oppose the proposal at issue here today. The California legislature, in the company of every other state that has considered such a proposal, recognized that intervening in the well functioning California software market would cause immediate and serious unintended consequences for the state, its IT industry and taxpayers.

The ISC strongly supports the development and adoption of all kinds of software: be it OSS, hybrid or commercial. For this reason, we believe that government procurement preference policies weaken the overall IT marketplace, biasing the choice of viable options available to public authorities.

All software purchasers, including governments are best served when they can select software from a broad range of products based on such considerations as value, total cost of ownership (TCO), feature set, performance and security. While subchapter 10 recognizes the importance of these factors in procuring software, it recites erroneous assumptions, including that OSS is inherently less costly, more versatile and more secure than commercial software. The licensing model chosen for a given software product is not determinative of total cost or software quality.

It is important to keep in mind that OSS, commercial and hybrid software are not unique technologies per se. Each simply reflect the licensing models used in their distribution. As such, any given software is not inherently better or more secure by virtue of the license used to distribute the product. Essentially, the licensing model points to the

incentive systems—i.e. the methods by which to receive a return on investment--that each developer selects.

Choice of licensing model comprises only a small fraction of the total costs of any software solution. A variety of other costs exist including training, service/maintenance contracts, access to skilled workers, hardware bundling considerations, etc. demanding a careful analysis of each desired option. Thus, an outright preference for any single solution short-circuits necessary review, removing merit from the equation. This can be avoided by looking to all options agnostically, knowing that no single licensing model guarantees automatic success, cost-savings or quality.

More than any other industry, the IT industry is characterized by huge investments in research and development. Billions of dollars are invested by technology companies each year into creating new software and improving existing software. The innovations that result from this process provide significant benefits to consumers, businesses and governments alike. Technology companies make these investments because they realize that the results of their investment will be protected by intellectual property laws.

The CPR itself recognizes the significant value that intellectual property rights in software code represent, not only for California but for all intellectual property rights holders. Proposal S006 directs the state to capitalize on the valuable intellectual property it holds in state owned code. The relevant sections state:

"The Governor should direct the state Chief Information Officer to obtain copyright and patent protection on the code owned by the state to protect this valuable resource as intellectual property. (S006C)

The Governor should direct the state Chief Information officer to seek potential license agreements and sales of the state's intellectual assets in public markets ...."(S006E)

It seems wholly inconsistent for the state to seek to commercially license its own software code while simultaneously denying that right to private companies wishing to contract with the California government.

The ISC believes that no new laws, policies or regulation are needed in order to accomplish what California can already do today—that is to go into the working software market, and acquire the best solution for the given need in every instance. The state can and should choose open source software when it represents the best value based on TCO; and the state can and should choose commercial software when it represents the best value.

In our view, the primary role of policymakers in this context is to establish and maintain a fair and inclusive regulatory framework and procurement process that allows all software models to compete on an equal basis taking into account the strengths and weaknesses of different options. Simply stated, an automatic preference for one type of software over another does not provide an answer for California's budget woes. Instead, preferences like those contained in subchapter 10 may negatively impact future software industry revenues. We respectfully urge you to continue to recognize that software licensing neutrality in state procurement is the best way to deliver the best value to your citizens, and as such ask you to ensure that license neutrality remain the foundation for IT procurement policy in California.

Respectfully submitted by,

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Cc: Ralph Simoni

